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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of Qwest Corporation's Arrangement for Commingled Elements	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
In the Matter of Qwest Corporation's Conversion of UNEs to Non-UNEs	

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on October 27-28, 2009, at the Offices of the Minnesota Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The OAH record closed on December 16, 2009, upon receipt of the parties' post-hearing briefs.

John Devaney, Perkins, Coie, 607 14th Street NW, Washington, DC 20005, and Jason Topp, 200 South 5th Street, Room 2200, Minneapolis, MN 55402, appeared for Qwest. Gregory Merz, Gray, Plant, Mooty, 500 IDS Center, 80 South 8th Street, Minneapolis, MN 55402, appeared for Integra Telecom (Integra). Dan Lipschultz, Moss & Barnett, 90 South Seventh Street, Suite 4800, Minneapolis, MN 55402, appeared for the CLEC Coalition. Linda S. Jensen, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55151, appeared for the Department of Commerce. Ganesh Krishnan, PUC staff, also attended the hearing.

STATEMENT OF THE ISSUES

What are the appropriate rates, terms, and conditions under which Qwest converts UNEs to non-UNEs and provides commingled elements to CLECs?¹

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

¹ Amended Notice and Order for Hearing (Mar. 23, 2009).

FINDINGS OF FACT AND CONCLUSIONS

Background

1. Under 47 U.S.C. § 251, incumbent local exchange carriers (ILECs) are required to negotiate in good faith the terms and conditions of interconnection agreements (ICAs) with competitive local exchange carriers (CLECs) and to lease certain network facilities at TELRIC rates.² If an agreement cannot be negotiated, the Act requires that unresolved § 251 disputes be submitted to arbitration, subject to oversight by state public service commissions.³

2. Initially, the FCC took the position that ILECs had to “unbundle” and provide most basic network elements at TELRIC prices. Since then, the FCC has changed its analysis of unbundling and interconnection obligations and has progressively limited the number of network elements ILECs must provide under § 251. Those changes were announced in 2003, in the Triennial Review Order (TRO),⁴ and in 2005, in the Triennial Review Remand Order (TRRO).⁵ In those orders, the FCC adopted a wire-center-based analysis that uses the number of access lines and fiber collocations in a wire center as proxies to determine impairment for high-capacity loops and dedicated transport. Where the triggers are not met, the ILEC must make these elements available under § 251 at TELRIC rates. Where the triggers are met, the wire centers are deemed “unimpaired,” the result being that various elements are no longer available as § 251 UNES at TELRIC rates.

3. Even if Qwest is no longer required to provide an element as a UNE at TELRIC prices, however, 47 U.S.C. § 271 requires Qwest to provide access to many of these elements as a condition of Qwest’s authority to provide long-distance service. Qwest has typically priced loop and transport elements that it must provide to local service competitors pursuant to § 271 based on its interstate or intrastate access tariff. It has priced other elements, such as dark fiber or the local service platform, based on commercial agreements.

4. In Minnesota, Qwest has filed annual petitions since 2006 to have wire centers classified as non-impaired. To date, Qwest has successfully petitioned the PUC to have approximately 22 wire centers in Minnesota classified as either Tier 1 or Tier 2 non-impaired. As a consequence, UNE DS1 and DS3 transport are not available between Tier 1 offices, and UNE DS3 transport is not available between a Tier 2 office

² A TELRIC rate is based on the total long-run incremental cost of an element, to be determined by a cost study based on the methodology set forth in 47 C.F.R. §§ 51.505. The methodology assumes the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of an ILEC’s wire centers.

³ See 47 U.S.C. § 252.

⁴ Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 16978 (2003), *vacated in part, remanded in part*, *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C.Cir. 2004) (TRO).

⁵ Order on Remand, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd. 2533 (2005), *aff’d*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006) (TRRO).

and other Tier 1 or Tier 2 offices. The CLECs anticipate that Qwest will continue its annual filings and that additional wire centers will be classified as non-impaired in the future, with the result that more UNE transport will be converted to non-UNE transport. As a consequence of Qwest's 2009 petition, approximately 2,500 transport circuits could be converted from UNEs to tariffed services.⁶

5. The "conversion" of an element occurs when Qwest is no longer required to provide an element as a § 251 UNE. "Conversion" means changing the status of an element from a § 251 UNE to some other status. Conversions take place on live, existing circuits.

6. A "commingled" element is one composed of a § 251 UNE (typically the loop) and a non-251 facility (typically transport). An enhanced extended loop (EEL) is a loop from an end user in one wire center connected to transport between that wire center and a second wire center, where the CLEC has a collocation. If both the loop and transport portions of an EEL are provided as § 251 UNEs, the EEL is referred to as a UNE EEL. When one portion is a § 251 UNE and the other portion is not a UNE, the EEL is called a commingled EEL. When both portions are provided out of Qwest's special access tariff, the EEL is referred to in this record as a "special access EEL." The Qwest tariff identifies this product as a "point-to-point designed services circuit," but Qwest has agreed that a "special access EEL" represents a combination of non-UNE loop and transport.⁷ A commingled EEL may be the result of the conversion of an existing transport circuit, or it could be ordered as a new circuit between unimpaired wire centers.

7. Conversion of a single UNE to a non-UNE, or conversion of a portion of a UNE EEL to a commingled EEL, is achieved without any physical change to the facilities that are already in place.⁸ All the required changes are made to records in Qwest's operational support systems (OSS).

8. The issues presented in this case arise because Qwest, in general, has separate OSS for the ordering, provisioning, repair, and billing of UNEs and non-UNEs. Qwest contends that the conversion process requires it to remove (or "disconnect") the UNE from its UNE systems and "re-install" the same circuit in its non-UNE systems, using a different circuit identification number. In the case of a commingled EEL, Qwest would treat the circuit as two separate circuits, with separate circuit identification numbers for loop and transport, and separate processes for ordering, provisioning, repair, and billing the two components. Qwest considers the installation intervals and repair commitments for a commingled EEL to be consecutive, and as a consequence the installation and repair intervals for a commingled EEL would be longer than for a

⁶ Hearing Ex. 1 (Albersheim Direct) at 11.

⁷ Tr. 1:26-28.

⁸ Hearing Ex. 19 (Denney Direct) at 18; Hearing Ex. 12 (Hunnicuttt Direct) at 6 ("Qwest does not disconnect the CLEC's existing circuits and replace former-UNE circuits with new circuits when performing UNE conversions."). Exhibits received during the contested case hearing are designated "Hearing Ex. ____." The parties have agreed that the record also includes exhibits that were received during the Qwest/Eschelon arbitration. Those exhibits are designated "ARB Ex. ____."

special access EEL. In addition, Qwest would issue separate bills for the loop portion and the transport, with no method of linking the two components.⁹

9. The FCC has addressed conversion issues as follows:

We decline the suggestions of several parties to adopt rules establishing specific procedures and processes that incumbent LECs and competitive LECs must follow to convert wholesale services (e.g., special access services offered pursuant to interstate tariff) to UNEs or UNE combinations, and the reverse, *i.e.*, converting UNEs or UNE combinations to wholesale services. Because both the incumbent LEC and requesting carriers have an incentive to ensure correct payment for services rendered, and *because both parties are bound by duties to negotiate in good faith, we conclude that these carriers can establish any necessary procedures to perform conversions with minimal guidance on our part.*¹⁰

. . . Converting between wholesale services and UNEs or UNE combinations should be a seamless process that does not affect the customer's perception of service quality. We recognize that conversions may increase the risk of service disruptions to competitive LEC customers because they often require a competitive LEC to groom interexchange traffic off circuits and equipment that are already in use in order to comply with eligibility criteria. Thus, requesting carriers should establish and abide by any necessary operational procedures to ensure customer service quality is not affected by conversions.¹¹

. . . We recognize . . . that once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions. Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any person or class

⁹ Hearing Ex. 20 (Denney Rebuttal) at 10.

¹⁰ TRO ¶ 585 (emphasis added) (footnote omitted).

¹¹ TRO ¶ 586 (emphasis added) (footnotes omitted).

of persons (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or advantage.¹²

We conclude that conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments. We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts. We decline to adopt [a commenter's] suggestion to require the completion of all necessary billing changes within ten days of a request to perform a conversion because such time frames are better established through negotiations between incumbent LECs and requesting carriers. *We recognize, however, that converting between wholesale services and UNEs (or UNE combinations is largely a billing function.*¹³

10. The cost of performing a conversion is not at issue in this case. In the 2006 wire center proceeding, the parties agreed to a \$25 per circuit charge for conversion. This rate is the design change charge taken from Qwest's interstate access tariff. The agreement on cost will remain in effect through June 2010.¹⁴

11. At one point in time, the FCC had restricted the obligation of an ILEC to "commingle" UNEs and combinations of UNEs with tariffed services; in the TRO, the FCC eliminated this restriction. The TRO provides, in relevant part:

We therefore modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g., switched and special access services offered pursuant to tariff), and *to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request.* By commingling, we mean the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services.¹⁵

. . .

We conclude that the Act does not prohibit the commingling of UNEs and wholesale services and that section 251(c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services. An incumbent LEC's wholesale services constitute one

¹² TRO ¶ 587 (footnotes omitted).

¹³ TRO ¶ 588 (emphasis added).

¹⁴ *In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis; In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-5692, 5340, 5643, 465, 6422/M-06-211; Docket No. P-999/CI-06-685, Order Adopting Settlement (Oct. 5, 2007).

¹⁵ TRO ¶ 579 (emphasis added).

technically feasible method to provide nondiscriminatory access to UNEs and UNE combinations. . . . For these reasons, *we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations.*¹⁶

12. The FCC also addressed arguments advanced by incumbent LECs that commingling should be prohibited because of the billing and operational issues involved in commingling a UNE with an interstate access service. It concluded that these issues could be addressed “through the same process that applies for other changes in our unbundling requirements adopted herein, i.e., through change of law provisions in interconnection agreements.”¹⁷ The FCC reaffirmed the validity of these commingling rules in the TRRO.¹⁸

Qwest/Eschelon Arbitration

13. The issues in this case were presented originally in the arbitration of an ICA between Qwest and Eschelon Telecom of Minnesota, Inc. (now Integra). In the arbitration proceeding, Qwest and Eschelon disagreed about the appropriate language to be used in the ICA relating to Qwest’s processes and prices for converting UNEs and providing commingled EELs.

14. Eschelon proposed language providing that neither the circuit identification number (circuit ID) nor the underlying physical circuit would be changed as a result of a conversion and that Qwest would perform the necessary price change by adding a surcharge to the existing price. Qwest refused to propose any ICA language regarding conversions and took the position that changing its existing system would be too costly.¹⁹

15. Eschelon also proposed that when a UNE EEL is converted to a commingled EEL, or when a new commingled EEL is ordered, both the loop and transport portions of the EEL be given a single circuit ID number, so that the facility could be ordered, repaired, and billed as a single circuit. Qwest took the position that loop and transport portions must have separate circuit identification numbers and that changing its system would be too costly.²⁰

16. The Commission found the arbitration record inadequate to resolve the dispute and opened these dockets for the purpose of investigating conversion and

¹⁶ TRO ¶ 581 (footnotes omitted, emphasis added).

¹⁷ TRO ¶ 583.

¹⁸ TRRO ¶142 n. 398.

¹⁹ *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-5340,421/IC-06-768, Arbitrators’ Report ¶ 157 (Jan. 16, 2006).

²⁰ Integra agrees that Qwest could not provide a multiplexed EEL with a single circuit identification number, because in that situation multiple loops would be combined and “multiplexed” onto a higher-capacity transport facility. Tr. 2:189. Integra’s proposed language is intended to apply only to point-to-point commingled EELs.

commingling issues and developing a better evidentiary record. In the interim, the Commission required that the ICA sections regarding conversion be left blank; it required the Qwest language to be used in the sections regarding commingling.²¹

17. In the arbitration proceeding and in these dockets, Qwest challenged the Commission's authority to arbitrate these issues and to further investigate these matters, maintaining that the Commission lacked jurisdiction to address the conversion or commingling of elements that Qwest is not obligated to provide under 47 U.S.C. § 251. The Commission disagreed, concluding that it had jurisdiction over the rates, terms, and conditions of a UNE conversion and that it similarly had authority to address the terms and conditions under which Qwest provides commingled elements and services.²²

18. In this proceeding, Integra and the CLEC Coalition contend that Qwest's processes for converting a UNE to a non-UNE and for providing commingled elements are cumbersome and constitute operational barriers to competition. They further contend that Qwest unilaterally developed those processes, when it should have done so with input from CLECs. They urge the Commission to require Qwest to modify these processes and to offer different terms and conditions to all CLECs through development of a standard amendment to an interconnection agreement (ICA).

19. As noted above, the FCC has ordered ILECs to negotiate the conversion process to ensure that it is "seamless" and does not affect an end-user's perception of service quality. It has also required ILECs to modify their interstate access tariffs to allow for commingling, to perform the functions necessary to effectuate commingling, and to negotiate the process through the change of law provisions in their ICAs. Qwest nonetheless contends that it is not required to negotiate with CLECs or to consider any CLEC input with regard to "non-251" processes. Qwest also maintains that its existing processes work well and that there is no legitimate business or operational justification for the changes proposed.

Qwest's Conversion of Special Access Services to UNEs

20. Qwest, like a number of ILECs, leases its operating systems from Telcordia Technologies, formerly known as Bell Communications Research, Inc., and originally a part of Bell Laboratories. Telcordia developed and built these systems in the 1980s. Qwest's ability to modify these systems, independently of Telcordia, is limited.²³

²¹ *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-5340,421/IC-06-768, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigations and Referring Issue to Contested Case Proceeding at 22 (Mar. 30, 2007) (Eschelon Arbitration Order).

²² Order Adopting Administrative Law Judge's Recommended Order on Motion for Summary Disposition and Amended Notice and order for Hearing (Mar. 23, 2009). See also TRO ¶¶ 585-88, TRRO ¶ 142 n. 398, ¶ 231 (conversions); TRO ¶¶ 579-84, TRRO 142 n. 398 (commingling).

²³ Tr. 1:87 (Albersheim); Hearing Ex. 12 (Hunnicut Direct) at 28..

21. Qwest's OSS, in general, uses different systems for the ordering, billing, and repair of UNEs and non-UNEs. CLECs order UNEs using Qwest's Interconnect Mediated Access (IMA) ordering system, on an electronic form called a Local Service Request (LSR). Non-UNEs are ordered using the Qwest Online Request Application (QORA) or the Unified Ordering Module (UOM) system, on an electronic form called an Access Service Request (ASR). There are exceptions; for example, UNE transport is ordered using an ASR instead of an LSR, because the transport inventory database is linked to that system. UNEs are billed with what is known as the Customer Record Information System (CRIS), whereas non-UNEs are billed with the Interconnect Access Billing System (IABS). Again, there is an exception for transport, which is billed from the IABS system unless it is part of a UNE EEL, in which case it is billed as a UNE through CRIS. The systems function separately and have little ability to "communicate" information to each other.²⁴

22. Qwest's performance in the ordering, provisioning, repair, and billing of UNEs is measured by Performance Indicator Definitions (PIDs) established by the Commission. When Qwest fails to meet a PID, it is required to make specified payments to CLECs. Qwest's UNE systems are designed to process UNEs in order to meet the PID requirements. Qwest's access services (non-UNEs) are also subject to performance indicators specified in its tariffs. These performance indicators may differ from those set for UNEs. The provisioning interval for a UNE EEL, for example, is five days, whereas the interval for a special access EEL is nine days.²⁵ The repair interval, however, is four hours for both UNEs and non-UNEs.²⁶

23. The circuit ID is a central component of Telcordia systems.²⁷ Qwest identifies each circuit in its inventory (whether UNE or non-UNE) by a circuit identification (circuit ID) number. The circuit ID may include a number of components, including a state code, a Universal Service Code (USOC) that specifies the type of service, a modifier that provides additional information about the service, a unique serial number, and a variety of suffixes that specify how the circuit is to flow through Qwest's systems. USOCs are published and defined by Telcordia; there are approximately 33,000 USOCs available. Qwest uses certain USOCs to identify UNE loops, and other USOCs to identify private lines or other access services. The unique part of any circuit ID is the serial number.²⁸

24. A circuit ID for a loop might appear as follows: 24.LXFU.123456.MS. In this example, "24" is the state code, "LXFU" is the service code and modifier, and "123456" is the serial number.²⁹

25. Qwest requires CLECs to use the assigned circuit ID number in all communications with Qwest concerning the provisioning, repair, and billing of the circuit.

²⁴ Hearing Ex. 1 (Albersheim Direct) at 11-13; *see generally* Hearing Ex. 13 (Torrence Direct).

²⁵ Tr. 2:24 (Torrence).

²⁶ Hearing Ex. 20 (Denney Rebuttal) at 42.

²⁷ Hearing Ex. 13 (Torrence Direct) at 18.

²⁸ Hearing Ex. 1 (Albersheim Direct) at 45-47.

²⁹ Hearing Ex. 1 (Albersheim Direct) at 47.

Its systems are designed to recognize the meaning of particular service codes and other data included in the circuit ID. Qwest's systems cannot automatically route requests for provisioning, repair, or billing, however, unless the circuit ID "matches" what the systems are programmed to expect. A circuit ID that contains a USOC identifying it as a UNE, for example, will not be recognized on an ASR that is submitted through QORA or UOM. A circuit ID that contains a USOC identifying it as a tariffed service will not be recognized on an LSR submitted through IMA. Service requests pertaining to these circuits will "err out" or "fall out" and must be manually directed to the appropriate system for downstream processing.³⁰ In other words, a service request regarding a circuit that contains an inaccurate USOC must be manually inserted into the system in the right place in order to flow through the rest of the process automatically.

26. In the late 1990s, when Qwest was converting tariffed special access services to UNEs, Qwest offered CLECs the option to change the circuit ID to reflect its new status as a UNE. To avoid potential disruptions, many CLECs declined this option and elected to retain the existing circuit ID. Qwest calls these "grandfathered circuits," and these circuits require manual processing before they can flow through Qwest's systems appropriately. In Qwest's view, it was "forced" to maintain inappropriate circuit IDs by CLECs who refused to change them.³¹

27. Although Qwest calls grandfathering a "temporary" practice, it was in fact Qwest's practice to allow grandfathered circuits until April 2005. As of that time, Qwest refused to grandfather any additional circuit IDs during conversions. Qwest maintains it did so because it was encountering difficulty in managing the large number of grandfathered circuits and that manual tracking caused "a substantial amount of unnecessary expense and undue burden."³² Apart from these bare assertions, the record contains no evidentiary detail to substantiate either the amount of expense or the burden imposed on Qwest. Qwest has also said that it refused to grandfather additional circuits because it is required to report certain data to the FCC, which require accurate counts based on circuit ID.³³ Qwest acknowledges, however, that it is able to identify grandfathered circuits relatively easily for reporting purposes, based on their out-of-use USOCs.³⁴ In addition, Qwest's obligation to file most of these reports with the FCC will terminate in September 2010.³⁵

28. Approximately one-third of Integra's UNE EEL circuits have service codes identifying them as private lines or special access circuits. These circuits were apparently grandfathered before April 2005. Integra is not aware of any issues regarding the timeliness of repairs to these circuits because of their grandfathered status.³⁶

³⁰ Tr. 2:62 (Torrence); Ex. 1 (Albersheim Direct) at 50.

³¹ Tr. 2:64-65 (Torrence).

³² Hearing Ex. 1 (Albersheim Direct) at 20.

³³ *Id.* at 21-22.

³⁴ Hearing Ex. 5 (Albersheim Surrebuttal) at 14.

³⁵ See Tr. 1:86 (Albersheim).

³⁶ Tr. 2:154-55 (Denney).

Qwest's Process for Converting UNEs to Special Access

29. Between 2003 and 2007, in response to the TRO and TRRO, Qwest began the process of converting UNEs back to special access products. Qwest gave CLECs inconsistent and confusing signals about how the conversion and commingling processes would be developed.

30. In October 2003, Qwest initially advised CLECs that it would negotiate these changes through the § 252 process; in October 2004, however, Qwest opened a Change Request in its Change Management Process (CMP) (which Qwest uses to address issues common to multiple CLECs) seeking to establish procedures there. A number of CLECs, including Eschelon, objected to Qwest's attempt to use CMP, maintaining these issues were properly subject to negotiation and arbitration in ICA proceedings under § 252. Qwest later deferred the Change Request, indicating that it would negotiate and arbitrate these issues with CLECs. In June 2005, Eschelon submitted its proposed language for conversions and commingled elements to Qwest in the ICA negotiations then underway. Qwest ultimately refused to use either the CMP or the negotiation process with CLECs.³⁷

31. Instead, on September 12, 2005, Qwest issued a PCAT (wholesale product catalog) announcement, advising CLECs that it had developed TRO/TRRO processes that would be posted to its website effective on October 3, 2005. In order to obtain access to the documents, Qwest indicated it would require CLECs to first complete and execute a TRO/TRRO-compliant ICA, after which Qwest would provide a user ID and password needed to obtain electronic access to the documents. Later that month, Qwest agreed to make the documentation available to the "full customer community," not just CLECs who had completed a TRO/TRRO-compliant ICA. Qwest indicated it would still require CLECs to use a common user ID and password to obtain access to the documents.³⁸

32. It appears Qwest issued the first version of the password-protected PCAT intended to address conversions on July 21, 2006. It advised CLECs that they would have to submit a collocation application for each central office seeking to reclassify UNEs. It provided that "terminations will be reclassified 'AS IS' and no . . . physical modifications will be performed as part of the reclassification." It further provided that, when the reclassification was complete, Qwest would advise the CLEC of the new cable name and that CLECs would be responsible for updating their databases to reflect the new name. In addition, Qwest advised that it would allow itself 45 days to complete the reclassification process.³⁹

33. The current version of the conversion PCAT provides, in part:

If you choose to convert your TRRO impacted UNEs "As Is" to Qwest's Private Line or Special Access Tariff Services, they will be converted

³⁷ Hearing Ex. 17 (Johnson Direct) at BJJ-2 & BJJ-4.

³⁸ *Id.*, BJJ-4 pages 9-12.

³⁹ *Id.*, BJJ-4 at 13. Qwest later agreed to shorten the reclassification period. *Id.* at n.7.

using a single ASR per circuit to establish the UNE as a PLT or SA circuit. Qwest will issue the appropriate service orders from the ASR. A "Conversion As Is" involves a change in billing and may also involve a change in circuit ID. There is no physical work performed to the circuit with a "Conversion As Is."

. . .

If you currently have circuits in which only a segment of the circuit is impacted by the TRRO and you choose to retain the impaired segment at UNE pricing; you may do a "Conversion As Specified." Two circuits of the same bandwidth are created and commingled together, utilizing a PLT Central Office Connecting Channel (COCC). The UNE circuit will in most cases retain the current UNE circuit ID and a new circuit ID will be provided with the new PLT/SA circuit. Two requests are required with a "Conversion As Specified."⁴⁰

34. The current version of Qwest's commingling PCAT provides, in part:

When two services are commingled, the service interval for each facility included in the commingled arrangement will apply. Performance measurements and/or remedies are not applicable to the total commingled arrangement but do apply to each facility or service ordered within the commingled arrangement. Work performed by Qwest to provide commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies. Provisioning intervals applicable to services included within a requested commingled service arrangement will not begin to run until the CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the commingling that is in addition to work required to provision the service as a stand-alone facility or service.⁴¹

35. With regard to trouble reports, the commingling PCAT provides that:

Once trouble has been isolated to Qwest's network, the CLEC will open a repair ticket and provide the test results on the specific circuit the CLEC has reason to believe is in trouble. The CLEC will also provide the other comingled circuit ID. If no trouble is found on the reported circuit and the problem is isolated to the other commingled circuit, Qwest will contact the CLEC and request the CLEC to open a customer report (CR) on the other circuit. There will be no charges if trouble is found in Qwest's network on

⁴⁰ Hearing Ex. 1 (Albersheim Direct) at RA-4.

⁴¹ Hearing Ex. 3 (Albersheim Rebuttal) at RA-5.

either of the two commingled circuits: unless a dispatch was requested by the CLEC after no trouble found on the reported circuit.⁴²

36. To avoid actual disconnection of customers during the conversion process, Qwest has used a manual process. When a request for conversion is received, Qwest service delivery coordinators make the records changes necessary to remove the circuit from the UNE database, and they create new records in the non-UNE database. Qwest does not believe the process needs to be mechanized, because it is neither time-consuming nor labor-intensive. It requires just a few minutes of time by a single service delivery coordinator. Qwest intends this manual process to be permanent.⁴³

Impact of Qwest Conversion Processes

37. Between 2006 and June 2009, Qwest converted 1,686 UNEs to tariffed services by changing the circuit ID. No service disruptions or outages occurred during the process.⁴⁴

38. Integra converted approximately 50 DS1 UNE loops in the Minneapolis Downtown wire center to Qwest special access products. Integra manually updated its systems to reflect the change in circuit ID. The process was not burdensome and took a few minutes per circuit. Integra has experienced no service disruptions linked to the change in circuit ID.⁴⁵

39. Although Qwest insists that that it must change the circuit ID during a conversion, what Qwest means is that it must change the circuit ID if it wants to ensure completely automatic service processing in the future. As noted above with regard to grandfathered circuits, Qwest can retain the circuit ID if it is willing to allow for some amount of manual processing. In addition, when the FCC removed Qwest's obligation to provide UNE loops in certain Nebraska wire centers in 2006, Qwest appears to have converted UNE loops to special access loops by changing the rate rather than the circuit ID.⁴⁶

Impact of Qwest Commingling Processes

40. To date, Qwest has received no requests from any CLEC to convert a UNE EEL to a commingled EEL. Nor has it received any request from any CLEC to

⁴² *Id.*

⁴³ Tr. 1:88-90, 110; Hearing Ex. 3 (Albersheim Rebuttal) at 21-22. Qwest's witnesses have provided contradictory testimony regarding the complexity of the conversion process. *Compare* Hearing Ex. 3 (Albersheim Rebuttal) at 21-22 (manual conversion process is neither time-consuming nor labor-intensive) with Hearing Ex. 13 (Torrence Direct) at 9 ("re-provisioning" of a converted UNE is a complex, multi-departmental coordinated effort by Qwest utilizing industry standard parameters).

⁴⁴ Tr. 1:35, 108 (Albersheim).

⁴⁵ Tr. 2:170, 173 (Denney).

⁴⁶ Hearing Ex. 20 (Denney Rebuttal) at 22).

install a new commingled EEL.⁴⁷ The potential need for these products will depend on the results of future wire center proceedings.

41. Qwest currently uses a single circuit ID number for both the loop and transport components of UNE EELs and special access EELs. In the event that Qwest is asked to install or repair a new commingled EEL, Qwest's process would require the use of a circuit ID for the UNE/loop portion and a second circuit ID for the special access/transport portion. The CLEC would be required to process the two components sequentially, starting with the special access component. The following table compares the different service intervals that would apply, according to Qwest:

	<u>UNE EEL</u>	<u>Special Access EEL</u>	<u>Commingled EEL</u>
Installation	5 days	9 days	Up to 12 days ⁴⁸
Repair	4 hours	4 hours	8 hours

42. Qwest's performance for repairing UNE loops and UNE EELs is measured at parity with Qwest's retail performance (meaning the service commitments are the same for UNEs and retail services).⁴⁹ To the extent that Qwest argues that changing the repair service interval for a commingled EEL might adversely affect its performance measurements, it appears this argument is misplaced.

43. The Qwest process for a commingled EEL would also produce two bills, one for the UNE component and one for the special access component. Verification of Qwest's bills is an essential process for CLECs.⁵⁰ Because these components would have different circuit ID numbers, it would be extraordinarily difficult for CLECs to correlate the bills in order to verify that the pricing was appropriate.⁵¹

Alternative Proposals

44. Integra has proposed ICA language regarding conversions (of either a single element or a portion of a UNE EEL) that would require Qwest to retain the circuit ID and to accomplish the conversion through a price change using an "adder," "surcharge," or new USOC.⁵²

45. With regard to commingling, Integra has proposed ICA language that would require Qwest to accept a single service request for a new commingled EEL; to assign a single circuit ID to both the loop and transport portions of the EEL; and to bill both portions on the same Billing Account Number (BAN). Integra proposes that the

⁴⁷ Tr. 2:103-04 (Torrence).

⁴⁸ This interval represents the nine days to provision the special access transport, plus three days for Qwest to issue a Firm Order Commitment (FOC) for the UNE loop. See Tr. 2:24-25, 32 (Torrence).

⁴⁹ Hearing Ex. 20 (Denney Rebuttal) at 42.

⁵⁰ Hearing Ex. 28 (Fagerlund Surrebuttal) at 11.

⁵¹ See, e.g., *id.* at DD-6 (a Qwest bill for UNE EELs).

⁵² Hearing Ex. 19 (Denney Direct) at DD-1.

service intervals would be the longer interval of the two components being commingled.⁵³

46. Integra's fallback proposal, only in the event that Qwest is permitted to use two circuit IDs for a commingled EEL, is that Qwest will identify and relate the two components on bills and in customer service records. Integra proposes specific language that would require Qwest to reference the other component on each bill by circuit ID; to create a separate account type for commingled EELs so they appear separately from other services on the bill; on the non-UNE bill, to provide the summary BAN and sub-account number for the UNE component; and to associate on all customer service records for each component the circuit ID and summary BAN for the other component.⁵⁴

47. With regard to repairs, Integra's language would require Qwest to accept a single trouble report that references both circuit numbers; a single repair charge; and a repair interval that does not exceed the longer interval of the two components.⁵⁵

48. The CLEC Coalition supports the language proposed by Integra.⁵⁶

49. With regard to conversions of a single element, the Department of Commerce recommends that Qwest be allowed to change the circuit ID. In addition, Qwest should be required to provide CLECs with information relating the new and old circuit IDs in a user-friendly format.⁵⁷ With regard to commingled EELs, the Department recommends that Qwest be required to treat the commingled EEL as a single circuit, with a single circuit ID and a single bill.⁵⁸

50. With the exception of the language regarding repair processes for commingled EELs, noted below, Qwest proposes no alternative language.

51. Although Qwest has provided much testimony to the effect that a finding of non-impairment in a particular wire center means that CLECs can build facilities themselves or obtain them from other carriers, a finding of non-impairment does not mean either that self-provisioning is possible or that alternatives to Qwest special access services are available.⁵⁹ Moreover, this testimony is not relevant. Qwest remains obligated to provide an appropriate conversion process and appropriate access to commingled EELs.⁶⁰

⁵³ Hearing Ex. 19 (Denney Direct) at DD-2.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See Post-Hearing Memorandum of CLEC Coalition.

⁵⁷ Hearing Ex. 27 (Fagerlund Reply) at 13.

⁵⁸ *Id.* at 27.

⁵⁹ Hearing Ex. 28 (Fagerlund Surrebuttal) at 12.

⁶⁰ *Id.* at 13.

Other State Commission Decisions

52. These same issues were arbitrated in a number of other states. In Arizona, the Commission permitted Qwest to change the circuit ID during a conversion from a UNE to a non-UNE, and it permitted Qwest to use two circuit ID numbers for a commingled EEL. It required Qwest to work with Eschelon to relate the two components for billing purposes, and it directed the parties to negotiate language regarding repair procedures.⁶¹ The parties subsequently agreed that Integra would submit two trouble tickets, one for each circuit, and that each ticket would cross-reference the other circuit. Qwest agreed to open and work the two tickets simultaneously. Qwest also agreed to a single, four-hour repair interval.⁶² Qwest does not believe the costs of manually coordinating the two tickets would be significant.⁶³

53. Qwest would agree to implement the Arizona agreement on repair procedures in Minnesota.⁶⁴

54. In Oregon, the Commission found the arbitration record inadequate to resolve the issues, and it opened a generic docket to investigate Qwest's conversion and commingling processes.⁶⁵ That docket is still pending.⁶⁶

55. In Washington, the Commission required Qwest to retain the circuit ID during a conversion and to implement price changes through an adder, surcharge, or change of USOC. With regard to commingling, the Commission allowed Qwest to use different circuit ID numbers for the UNE and non-UNE components, but it required Qwest to relate the separate components on the bill and in the customer service record.⁶⁷

56. Qwest has appealed the portion of the Washington Order regarding conversions and billing. The appeal is pending in U.S. District Court for the Western District of Washington.⁶⁸

57. The parties reached agreement, however, on the processes to be used on an interim basis, which is defined as the period from April 2009 until the agreement is amended to reflect that a mechanized solution is in place for implementing the Washington Commission's rulings. The agreement provides that, during the interim period, Qwest will process conversion requests by accepting an LSR (for loop) or ASR

⁶¹ Hearing Ex. 23 (Denney Surrebuttal) at DD-15 (Opinion and Order of Arizona Corporation Commission May 16, 2008).

⁶² Tr. 2:35-43 (Torrence); Hearing Ex. 16 (Torrence Surrebuttal) at RT-2 (agreed-upon ICA language).

⁶³ Hearing Ex. 20 (Denney Rebuttal) at DD-5 (Stewart Testimony in Arizona 8/11/09 at pages 11-30).

⁶⁴ Hearing Ex. 16 (Torrence Surrebuttal) at 29.

⁶⁵ *Id.* at DD-15 (Order Approving Arbitrator's Decision with Modifications).

⁶⁶ Hearing Ex. 3 (Albersheim Rebuttal) at 17.

⁶⁷ Hearing Ex. 23 (Denney Surrebuttal) at DD-15 (Washington State Utilities and Transportation Commission, Final Order Granting, in Part, Eschelon's Petition for Review; Granting, in Part, Qwest's Petition for Review; Affirming, in Part, and Modifying, in Part, Arbitrator's Report and Decision, Oct. 16, 2008).

⁶⁸ Hearing Ex. 1 (Albersheim Direct) at 23 n. 20; Hearing Ex. 3 (Albersheim Rebuttal) at 38.

(for transport) that has been appropriately coded by the CLEC. Qwest will perform the manual processing necessary to accomplish the conversions, and it will not change the circuit ID. With regard to the conversion of a UNE EEL to a commingled EEL, Qwest agreed to accept a single service request that has been appropriately coded by the CLEC.

58. With regard to conversions resulting in commingled EELs, the parties further agreed that Qwest may use two circuit IDs for the commingled EEL after the conversion, and the UNE component will have the same circuit ID as was formerly assigned to the UNE EEL; Qwest may assign a different circuit ID to the non-UNE component. With regard to new commingled EELs, the CLEC will submit two service requests (one for the non-UNE, followed by a request for the UNE). In addition, Qwest agreed to provide, at least once a month, a spreadsheet containing, for each commingled EEL, the circuit ID for the UNE component; the circuit ID for the non-UNE component; the summary Billing Account Number (BAN) for the UNE component; the summary BAN for the non-UNE component; and the sub-account number for the UNE component.⁶⁹

59. In the Minnesota arbitration, the Commission approved of Qwest's proposed language, on an interim basis. The ICA allows Integra to open a single trouble ticket for the repair of commingled EELs that references both circuit ID numbers. Qwest's service delivery coordinators manage the request as a single trouble ticket. If no trouble is found on the first circuit, Qwest's service delivery coordinator will contact Integra to reach mutual agreement about who will open the second repair ticket. Only one repair charge will be billed.⁷⁰ The repair interval is four hours for each circuit, or eight hours total.⁷¹

60. In Utah, the Administrative Law Judge rejected Eschelon's proposals and adopted Qwest's language.⁷²

Recommendations

61. The record would support a variety of approaches, which have different advantages and disadvantages.

62. The Commission should make it clear to Qwest that it is obligated to negotiate the conversion and commingling processes with CLECs. Qwest should not be permitted to unilaterally impose terms and conditions when a CLEC has properly attempted to negotiate these issues in the arbitration process. Qwest's refusal to negotiate a practical solution to the conversion and commingling issues raised in this

⁶⁹ Hearing Ex. 20 (Denney Rebuttal) at DD-14; Hearing Ex. 1 (Albersheim Direct) at 23-27; Hearing Ex. 2 (Albersheim Rebuttal) at 39-41.

⁷⁰ Hearing Ex. 1 (Albersheim Direct) at 26; Tr. 2:36-37 (Torrence); Hearing Ex. 23 (Denney Surrebuttal) at 12.

⁷¹ Tr. 2:37 (Torrence).

⁷² Hearing Ex. 23 (Denney Surrebuttal) at DD-15 (Report and Order on Arbitration of Interconnection Agreement, July 11, 2008).

docket has prolonged their resolution for an inordinate period of time and has resulted in the expense of multiple dockets.

63. The record reflects that Qwest can convert UNEs to tariffed services without changing the circuit ID, and it can do so without making any changes to its existing OSS. This can be achieved, however, only by flagging those circuits to drop out for manual processing. This is what Qwest has done with respect to all grandfathered circuits, as described above; and this is what Qwest agreed to do in Washington, until a mechanized solution is developed.

64. Integra is not particularly interested, however, in a manual process; it wants Qwest to add modifiers to the existing circuit ID so that changes are processed automatically. As Integra points out, manual processing increases the likelihood of human error.

65. In general, it is not in the interest of either an ILEC or a CLEC to advocate increased reliance on manual processing when automatic processes are available. Although Qwest can and does arrange to handle these circuits manually without changing the circuit ID, Qwest does not currently have the ability to retain the circuit ID without manually processing subsequent service requests. When Qwest changes the circuit ID during a conversion, it accomplishes more than simply changing the price of the circuit; the change allows Qwest to handle subsequent repairs and billing automatically.

66. To date, there is no evidence that any human error in the conversion process has caused a service interruption for any end user customer. Qwest has managed its current process to change the circuit ID of approximately 1,700 circuits in an apparently seamless manner, from the perspective of end users. Changing the circuit ID number is not convenient from Integra's perspective, but it does not appear to have constituted an operational barrier to obtaining access to UNEs.

67. During the conversion process, Qwest could retain the *serial number* portion of the circuit ID, but change the service codes and other modifiers needed to permit automatic processing. Qwest could do the same thing with a commingled EEL—use the same *serial number* for both portions of the commingled circuit, but use different service code modifiers. This would possibly make it easier for both Qwest and CLECs to track the changes and to correlate billing. No party has specifically asked for this, but Qwest admitted during the hearing that this would be possible.⁷³

68. Qwest's estimates of the cost to implement all of Integra's proposals (up to \$6 million) reflect the cost of modifying Telcordia systems and Qwest interfaces to allow for the completely automated processing of conversions and commingled EELs. No party is advocating that Qwest be required to incur this expense or to make these types of changes to its OSS.

⁷³ Tr. 2:56 (Torrence).

69. The Commission could require Qwest to continue to use a single circuit ID for a commingled EEL (either the UNE circuit ID or a new one of Qwest's choosing), but this again would cause the circuits to drop out for manual processing of all subsequent events—installation, repair, and billing. Qwest could add the necessary codes to ensure that the non-UNE portion is appropriately priced. But this process is not efficient in the long term, and there would be some risk of human error at each step.

70. The main problem with Qwest's proposal to use two circuit IDs for commingled EELs is not the use of two circuit IDs *per se* but the impact on installation and repair intervals and the difficulty of correlating the bills. Longer installation and repair intervals and confusion in billing could well affect an end user's perception of service quality, and Qwest has admitted as much.⁷⁴ The bottom line is that it should not be more difficult for CLECs to purchase a commingled EEL than to purchase a special access EEL.

71. If Qwest were allowed to use two circuit IDs for a commingled EEL, the process could be made less cumbersome by requiring Qwest to perform the manual processing necessary to correlate the two circuits. For conversions of UNE EELs to commingled EELs, the Commission could require Qwest to accept a single service request, which is what Qwest agreed to do in Washington. For new commingled EELs, the Commission could also require Qwest to accept a single order form, which Qwest would manually process to whatever format is required to flow through its systems. The installation interval should be no longer than that required for a special access EEL (nine days). With regard to repairs, the Commission could similarly require Qwest to accept a single repair ticket that cross-references both circuit numbers, which Qwest again agreed to do in Washington. Qwest has not established that such manual processes would require more than a few minutes of time. In no event should Qwest be permitted to charge more than one repair charge, and the repair interval should not be more than four hours in either scenario. With regard to billing, Qwest could be required to provide, at minimum, the information necessary to correlate the loop and transport portions of the separate bills.

72. Because of Qwest's track record of managing the conversion process without disruption to end users, and because the inconvenience to CLECs appears to be minimal, the Administrative Law Judge recommends that Qwest be allowed to change the circuit ID during the conversion process. Changing the circuit ID at this point in time will allow Qwest's systems to automatically process subsequent repairs and billings related to the circuit.

73. Qwest has no track record of managing the conversion of UNE EELs to commingled EELs, because at this point in time, no CLEC has requested such a conversion. Nor has any CLEC requested a new commingled EEL. Given the non-existent demand for this product to date, the Administrative Law Judge recommends that the Commission allow Qwest to use different circuit IDs, but place on Qwest the responsibility for manually correlating the two circuits and for providing this information

⁷⁴ Tr. 1:86 (Albersheim).

to CLECs in a usable way. Qwest should be required to accept a single service request to convert a UNE EEL or to create a new commingled EEL, but Qwest should be allowed to assign a different circuit ID to the non-UNE portion of the circuit. The installation interval for a new commingled EEL should be no longer than the interval for a special access EEL (nine days). For repairs, Qwest should be required to accept a single trouble ticket that cross-references both circuit numbers; Qwest should be limited to one repair charge; and the repair interval should be no longer than the repair interval for special access EELs (four hours). To correlate the separate bills, Qwest should be required to provide a spreadsheet with information similar to that agreed upon in Washington.

74. If the demand for these products increases as a result of future wire center proceedings, and if the parties experience problems with whatever process the Commission adopts, then they will be free to engage in negotiations to revise those processes. If those negotiations fail, they can seek arbitration as they would for any other provision of an ICA. Qwest should not be permitted to change unilaterally whatever process is adopted.

Based on the above Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commission require the parties to draft a standard ICA amendment that incorporates the process required by the Commission and to file it within 30 days of the Commission's decision in this case. The standard ICA amendment should be available to all CLECs in Minnesota.

Dated: February 1, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

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NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 and Minn. R. 7829.2700, any party adversely affected by this Report shall file exceptions to it within 20 days of the filing of the Report. Exceptions should be filed with the Executive Secretary, Minnesota Public Utilities Commission, 350 Metro Square, 121 Seventh Place East, St. Paul, MN 55101. Any replies to exceptions shall be filed and served within ten days of the due date for exceptions. Oral argument before a majority of the

Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply.

The Minnesota Public Utilities Commission will make the final decision after the expiration of the period for filing exceptions and replies or after oral argument, if held. Further notice is hereby given that the Commission may, at its own discretion, adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations.

Under Minn. Stat. § 14.62, subd. 1, the Commission is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.